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EXAMINER

KAZEMINEZHAD, FARZAD

ART UNIT

PAPER NUMBER

2626

NOTIFICATION DATE

DELIVERY MODE

11/18/2011

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docket@kilpatricktownsend.com  
ipefiling@kilpatricktownsend.com  
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# **Advisory Action** **Before the Filing of an Appeal Brief**

**Application No.**

10/581,434

**Applicant(s)**

SATO, YASUSHI

**Examiner**

FARZAD KAZEMINEZHAD

**Art Unit**

2626

**-The MAILING DATE of this communication appears on the cover sheet with the correspondence address -**

THE REPLY FILED 02 November 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action; or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
- c) ☐ A prior Advisory Action was mailed more than 3 months after the mailing date of the final rejection in response to a first after-final reply filed within 2 months of the mailing date of the final rejection. The current period for reply expires \_\_\_\_\_ months from the mailing date of the prior Advisory Action or SIX MONTHS from the mailing date of the final rejection, whichever is earlier.

**Examiner Note:** If box 1 is checked, check either box (a), (b) or (c). ONLY CHECK BOX (b) WHEN THIS ADVISORY ACTION IS THE FIRST RESPONSE TO APPLICANT'S FIRST AFTER-FINAL REPLY WHICH WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. ONLY CHECK BOX (c) IN THE LIMITED SITUATION SET FORTH UNDER BOX (c). See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.135(a). The date on which the petition under 37 CFR 1.135(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## **NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

## **AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_ (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:

## **AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

## **REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13. ☐ Other: \_\_\_\_\_

## **STATUS OF CLAIMS**

14. The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_  
Claim(s) objected to: \_\_\_\_\_  
Claim(s) rejected: \_\_\_\_\_  
Claim(s) withdrawn from consideration: \_\_\_\_\_

/F. Kazeminezhad/  
AU 2626

/Talivaldis Ivars Smits/  
Primary Examiner, Art Unit 2626

Continuation of 11. does NOT place the application in condition for allowance because: Following reproduction of the part of office action pertaining to the last limitation of claim 14 as well as reproduction of spec. paragraphs 0221 and 0222 on pages 6-7 of the remarks, the applicant on top of page 8 has asserted: "However, the so-called "process items" are not "undefined", and goes on to quote part of Tagaki associated with step "S1" in Fig. 7 to support his claim. These pertain to teachings of Tagaki.

First, since the applicant has referred to his spec's published version's paragraph numbers above, therefore the examiner will also use the published version paragraph numbers in all the items that follow.

The paragraph 0222 typed in by the applicant on lines 7-4 above page bottom on page 6, which is basically a replica of the last part of the last limitation of claim 14, does not include the adjective "undefined" describing the "process item". Indeed the only location in the entire specification which discloses a process item associated with such an adjective is paragraph 0014, which recites: "When a jump is made from a predetermined process item to a process item or transition definition data which is not defined by transition defining data, transition definition data corresponding to the process item or transition definition data jumped from the predetermined process item can be generated".

There are 3 problems here: 1) In paragraph 0014, in the "not defined" "process item", there is no mention of the number of transitions and therefore it is not clear if the "process item" in paragraph 0222 corresponds to those in paragraph 0014; 2) even assuming the process item in Par 0014 to be the same as that in par 0222, the spec (as well as the claim) is completely silent on the notion of "undefined" or "not defined" process items, or how such process items differ from other process items; 3) therefore under the broadest reasonable interpretations in light of the specification (MPEP 904.01), the examiner simply mapped "undefined" "process item" to a probabilistic (not a priori definite) transition probability governing robot behavior. To further support this, please see Tagaki Col. 5 lines 25-27 which teach: "Based on the recognition result of the evaluation, a behavior selection pattern can be changed"; also Col. 6 lines 8 and 13-14 teach: "transition probability .... changes, based on the computation results". Fig. 5 very clearly shows that the initial state "node0" has n potential second states, which implies the next behavior or process is undefined. Therefore the transition in Tagaki from one behavior to another is undefined as it involves a probability calculation. The part of Tagaki used for the said limitation (pages 5-6 OA) and the one before that corresponds to the step "S5" in Fig. 7 and not the step "S1" relied by the applicant on page 8 the first paragraph of the remarks and noted above.

In the second paragraph on page 8, on lines 1-4 it is asserted: "Still further, Tagaki does not add new transition definition data indicating said transition when the number of transitions from one undefined process item to another process item reaches a predetermined number. The "transition definition data" is claimed as "associating a discrimination condition with a weighting factor," and here, the Office Action is merely referring to updating a probability". This latter teaching which corresponds to the second limitation was not entirely attributed to Tagaki, but rather to Sekiguchi in view of Tagaki (OA P. 4, second par, and P. 7 1<sup>st</sup> Par.); i.e., Sekiguchi's robot's specific behavior was mapped to claim's "discrimination condition", behavior data to transition definition data for plurality of process items; however the weight factor was mapped to "1+L" factor in Tagaki Eq. in Col. 7 line 26 (page 5 second par line 6, page 6 line 1 of OA). To summarize Sekiguchi was relied on simply teaching a "transition of state" using a distance function giving rise to a definite transition upon successful recognition based on the distance function, while Tagaki's weight factor modified the robot's transition of behavior based on the user's voice (OA P. 7 Par 1).

Given these, unfortunately the examiner does not agree with applicant's conclusion that "Tagaki does not disclose or suggest" the second and last limitations of claim 14 (page 8 Par. 3), and cannot allow the claim and its dependent's at this point.